IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 8884 of 1996

Date: 30.08.2005

Between:

Sri Sanjay Jain, S/o. A.C. Jain,
Delhi.

..... PETITIONER

AND

The Authority Under Payment of Wages Act and Asst. Commissioner of Labour, Circle-I (Twin Cities) T. Anjaiah Bhawan, R.T.C X Roads, Hyderabad and others.

.....RESPONDENTS

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ORDER:

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The order of the first respondent, in M.P.No.1 of 1995 in Case No.P.W.2 of 1995 dated 29.12.1995, dismissing M.P.No.1 of 1995 in Case No.P.W.2 of 1991, is impugned in this writ petition.

The facts, to the extent necessary for this writ petition are, “M/s.Federal Sports", a partnership firm, was engaged in manufacturing Cycle Chains at the Industrial Estate, Sanath Nagar, Hyderabad, of which the petitioner herein is said to be one of the partners. The partnership firm was subsequently converted into a proprietary concern with the petitioner as its sole proprietor. It is stated that the manufacturing activity of the proprietary concern was closed on 30.09.1990 and after closure, all

workmen and officers were removed from service. Since then the petitioner is said to be living in Delhi.

The Workers Union filed P.W.2/1991 before the first respondent claiming wages for the months of April, 1989, March, 1990, April, 1990, September, 1990 to December, 1990, totaling to a sum of Rs.2,73,520/- and also claimed compensation of Rs.6,050/-. The first respondent passed *ex parte* order on 21.02.1991 in P.W.2/1991 directing the petitioner herein to deposit a sum of Rs.2,73,520/- towards wages together with a compensation of Rs.140/- to each of the 37 applicants, the total amount required to be deposited by the petitioner worked out to Rs.2,78,700/- and the same was directed to be deposited within a period of three days.

The petitioner filed a petition to set aside the *ex parte* order on 28.08.1995. Since execution proceedings had been initiated, the petitioner filed W.P.No.24264 of 1995 before this Court and this Court by order dated 13.10.1995 disposed of the writ petition directing the first respondent to dispose of the petition, filed by the petitioner, to set aside the *ex parte* order dated 21.02.1991. The first respondent took up M.P.No.1 of 1995 in P.W.No.2/1991 for hearing and by order dated 29.12.1995, dismissed M.P.No.1 of 1995 in P.W.No.2/1991. Challenging which, the present writ petition is filed.

It is seen from the order of the first respondent dated 29.12.1995 that both the petitioner and the second respondent had full knowledge of the proceedings in P.W.No.2/1991 as is clear from the letter submitted by them on 04.02.1991. The order also reveals that the petitioner had requested for adjournment stating that he was not well and had enclosed a medical certificate. The first respondent relied on a judgment of this Court, that after an *ex parte* order is passed, the authority has no jurisdiction to re-open a case after a lapse of 30 days from the date of pronouncing the judgment, and held that the petition was liable to be rejected on the ground that the petitioner had filed the Miscellaneous Petition to set aside the *ex parte* order after a lapse of 5 years, without showing any valid reasons for re-opening the case. The version of the petitioners that they were not aware of the case and the orders passed by the authority, was disbelieved and the first respondent dismissed M.P.No.1/1995 holding that he did not see any merits for re-opening of the case, as the Authority has no jurisdiction to hear the case after lapse of 30 days.

Learned counsel for the petitioner vehemently contends, placing reliance on the

judgment of the Bombay High Court in **KIRAN SIZING vs. IQBAL AHMED KAMRUDDIN,** that an application to set aside the *ex parte* order is required to be considered on merits and cannot be rejected taking a hyper technical view. Learned counsel would submit that the first respondent, while passing the impugned order, had referred to a judgment of this Court without giving any details thereof and that it is not known as to what was the law laid down by this Court in the said judgment. Learned counsel would submit that since there is no prohibition for the first respondent to entertain the application to set aside *ex parte* order, even after 30 days, action of the first respondent in refusing to entertain such an application on the ground that it is beyond his jurisdiction, is erroneous.

None appears for respondents 1,2 and 4. Insofar as the third respondent is concerned, the writ petition was dismissed by the order of this Court dated 11.04.2000.

It is neither clear as to what is the judgment of this Court, referred in the impugned order, nor what is the law laid down by this Court in the said judgment. Be that as it may, even assuming that the first respondent is not denuded of jurisdiction, to entertain an application to set aside an *ex parte* order even beyond 30 days, the fact remain that the application was filed five years after the order was passed. Even in the affidavit filed in support of the present writ petition, it is stated in ground (n), as under:

> (n) The 1st Respondent Authority ought to have seen that the petitioner has not received the notices fixing the dates of hearing after 5-2-1991 and particularly the date of hearing fixed on which date the 1st Respondent Authority proceeded with the matter exparte. Merely because earlier a notice was received by the petitioner is no ground to reject the application filed by the petitioner even though the subsequent notices are not served on the petitioner. Therefore, the impugned order made by the 1st Respondent Authority is liable to be set aside."

It is thus clear that the petitioner had received the notices, fixing the date of hearing on 05.02.1991, and as such was aware of the proceedings. His grievance that he has not been served notices of the subsequent dates of hearing is without basis. Being aware that the first date of hearing was on 05.02.1991, the petitioner should

have taken such steps, as were available to him in law, to ensure that he was properly represented before the first respondent in the subsequent hearings and cannot claim that he should have been put on notice of the dates of the subsequent hearings also. The petitioner was aware of the pendency of P.W.2/1991 before the first respondent and the date of hearing on 05.02.1991, but filed the application to set aside the *ex parte* order in Case No.P.W.2/1995, nearly five years after the date of the order. There is no explanation forthcoming, much less, a reasonable explanation, for the inordinate delay in filing of the application.

It is stated in the affidavit that the petitioner had come to know about the order only when an advertisement was published in the News Papers for the sale of the properties of the company at Hyderabad and one of his well wisher had communicated the same to him. The affidavit, filed in support of the writ petition, is equally silent as to the date of advertisement in the News Paper or the date on which the petitioner had received communication from his "well wisher". There is no explanation for the inordinate delay of five years in filing the petition to set aside the *ex parte* order. The first respondent was justified in refusing to entertain such an application and had rightly held that the said application is filed after five years, without any valid reasons for reopening the matter.

I see no reasons to interfere with the order of the first respondent. The writ petition fails and the same is accordingly dismissed. No costs.

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Ramesh Ranganathan, J

Date: 30.08.2005

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